

#### IV. Remarks

##### A. Status of the Application

Applicants appreciate and acknowledge the allowability of claims to 13-16. Claim 10 has been amended, and Claims 17-29 have been added. Accordingly, the pending claims are 10-29. No new matter has been added by the amendments herein. Reconsideration of this application in light of the above amendments and the following remarks is respectfully requested.

##### B. Rejection under 102(b) over U.S. 5,445,639 to Kuslich

Claims 10 and 11 are rejected under 35 U.S.C. 102(b) over U.S. Patent No. 5,445,639 to Kuslich ("Kuslich"). To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

Kuslich teaches an intervertebral reamer construction. The reamer includes hollow shaft 24, having distal end 26. At distal end 26 is a slot 35 holding blades 40 and 42. Blades 40 and 42 may be retracted within slot 35, or extended out of slot 35, as seen in Figures 11 and 12, respectively. (Kuslich, column 5, line 20 - column 6, line 18, and Figures 5, 11, and 12).

As described in Kuslich, "... distal end 26 is provided with a slot 35 extending therethrough." (Kuslich, column 5, lines 47-48).

Applicants' independent claim 10 recites the limitations of, "a body having a longitudinal axis and an outer surface defining a longitudinally extending substantially cylindrical configuration extending over a majority of the circumference of said outer surface and a truncated surface interrupting said substantially cylindrical configuration; a cutting element positioned in said truncated surface; a transverse axis, transverse to the longitudinal axis, the transverse axis intercepting at least a portion of the substantially cylindrical configuration, and intercepting at least a portion of the cutting element."

Kuslich does not teach or suggest the desirability of a transverse axis intercepting at least a portion of the substantially cylindrical configuration, and intercepting at least a portion of the cutting element. Any transverse axis in Kuslich intercepting at least a portion of blade 41, would also intercept at least a portion of blade 42 or at least a portion of slot 35.

Dependent claim 11 is allowable for at least the same reasons as its respective independent claim discussed above. Applicant respectfully requests that the Examiner withdraw the rejection to claims 10 and 11 for at least the reasons set forth above.

C. Rejection under 102(e) over U.S. 5,922,003 to Anctil

Claims 10 and 12 are rejected under 35 U.S.C. 102(e) over U.S. Patent No. 5,922,003 to Anctil ("Anctil"). To the extent the rejection applies to the amended claims, Applicants respectfully traverse the rejection.

Anctil teaches an angled rotary tissue cutting instrument. The instrument includes a cutting tip 38 having a rounded distal end 42 and an opening 50, with cutting edges on the peripheral sides of the opening 50. (Anctil, column 5, lines 34-48, and Figure 5).

As described in Anctil, "Peripheral edges of opening 50 form a cutting edge at the distal end of the cutting tip ... " (Anctil, column 5, lines 43-45).

Applicant's independent claim 10 (and dependent claim 12) recites the limitations of, "a body having a longitudinal axis and an outer surface defining a longitudinally extending substantially cylindrical configuration extending over a majority of the circumference of said outer surface and a truncated surface interrupting said substantially cylindrical configuration; a cutting element positioned in said truncated surface; a transverse axis, transverse to the longitudinal axis, the transverse axis intercepting at least a portion of the substantially cylindrical configuration, and intercepting at least a portion of the cutting element."

Anctil does not teach or suggest the desirability of a transverse axis intercepting at least a portion of the substantially cylindrical configuration, and intercepting at least a portion of the cutting element. Any transverse axis in Anctil intercepting at least a portion of a cutting edge would also intercept at least a portion of the cutting edge on the opposite side, or a portion of the opening 50.

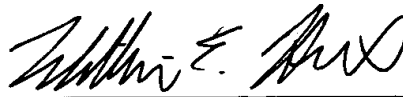
Applicants respectfully request that the Examiner withdraw the rejection to claims 10 and 12, for at least the reasons set forth above.

D. Conclusion

Unless otherwise specifically noted, none of the amendments to the claims are for a reason related to patentability. Claim 10 was amended to more clearly set forth the scope of the invention.

In view of the foregoing, Applicant respectfully submits that all pending claims are allowable, and respectfully requests a notice of allowance for claims 10-29. If the Examiner believes an interview would be helpful in moving the application forward to allowance, or has any questions, the Examiner is invited to call the undersigned at the telephone number listed below.

Respectfully submitted,



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DATE OF DEPOSIT: 12-12-2003

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Stacy Lanier

Name of person mailing paper and fee

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